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December 18, 2023

McNatt v. Prince, et al., 1:16-cv-08896-SHS (S.D.N.Y.)

Dear Judge Stein:

This firm represents Plaintiff Eric McNatt in the above-titled case, and we write with respect to the offer of judgment made by Defendants on December 4, 2023 (the “Offer”), and our acceptance of the Offer as we believe it should be interpreted.

On November 10, 2023, Defendants made an Offer of Judgment pursuant to Rule 68. (Attachment A.) That offer was defective because, as we explained to Defendants by letter dated November 24, 2023, it excluded the “costs then accrued” among other deficiencies. (Attachment B.) Rather than remedy these defects, Defendants re-sent the same offer on December 4, 2023 (Attachment C), accompanied by a letter purporting to explain why the offer was not defective (Attachment D). In a letter of December 5, 2023, we promptly advised Defendants of the continued deficiencies in the Offer and asked them to provide a proposed form of order, clarifying its terms. (See Attachment E.) Defendants not only declined to provide a proposed form of judgment, but also they elected not even to respond to our letter.

While we continue to believe the Offer is defective—it disregards the plain language of the rule, which requires that an offer include “costs then accrued”, and lacks clarity as to its non-monetary terms—Plaintiff today accepted the Offer with the understanding and on the condition it will result in entry of the Final Judgment attached to Plaintiff’s Notice of Acceptance of Offer of Judgment. (Attachment F.) Plaintiff did so out of an abundance of caution, as today is the last day to accept the Offer. We have reason to believe our proposed language may be acceptable to Defendants, but we have not heard from them for several days, either directly or through the mediator (despite following up with the mediator today).

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If the Court agrees that Plaintiff's proposed Form of Judgment clearly and fairly reduces the Offer to a Final Judgment and Defendants do not object, then Plaintiff respectfully requests that the Court enter the proposed Form of Judgment at Attachment G.

Respectfully submitted,



Christopher P. Davis

Hon. Sidney H. Stein
U.S. District Court, Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl St.
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VIA ECF

Copy to:

All Counsel of Record

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